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COORDINATING COMMITTEE

MEMORANDUM BY THE UNITED STATES DELEGATION

ON

MEASURES TAKEN BY THE UNITED STATES TO OFFSET CONTROL PROBLEMS

RESULTING FROM THIRD COUNTRY NON-COOPERATION IN THE TAC SCHEME

(Relating to Agenda Item 4(b) for May 19 meeting of Subcommittee on Export Controls - COCOM Document 3486).

The answers to Question A-6 of the TAC Questionnaire (Annex A to COCOM Sub-C (58)2) indicate that the PC's are in agreement that the principal weakness in the TAC scheme lies in the fact that certain free world countries do not cooperate in the scheme. In discussing this problem in the Subcommittee meeting of November, 1958, the United States Delegate suggested "that special attention should be paid to this problem during the next few months, then at the next meeting of the Subcommittee it might be possible to frame concrete recommendations to the Committee."

It is recognized that this problem cannot be fully resolved without the cooperation of all free world countries. However, the studies of the Working Group on Illegal Diversions in November, 1958, indicate that the loopholes caused by third country non-cooperation can be materially reduced by more effective PC controls. The deficiencies in PC controls were pointed out by the Chairman of the Working Group in his report to the Subcommittee on Export Controls in the conclusion, paragraph 26, items (1) and (3) of the Annex to COCOM Document No. Sub-C (59)1B, as follows:

- "(1) Financial controls were found to be not as efficient as expected ..."
- "(3) Loopholes were found to exist in transactions involving non-Member countries. Participating countries should exercise special scrutiny in dealing with these countries. This matter should be reviewed again at the next meeting;..."

The United States has critically re-examined its controls in the light of the comments of the Working Group Chairman. Insofar as the United States is concerned, the control problems referred to by the Chairman are materially minimized by the geographic position of the United States. In addition, the United States has in effect regulations which implement internationally agreed control measures specifically applicable to the problems mentioned by the Chairman.

1. With regard to transit controls, paragraph 5 of the TAC scheme (Annex A to COCOM Sub-C(54)7) provides that "if it is clear to a transshipping country that a resident of a participating country acts as a principal in a transaction involving the shipment of goods from a country not cooperating in the scheme to the Soviet Bloc, the transshipping country will not allow the shipment to transit unless a T.A. issued by the country of residence of the principal is submitted."

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The United States, acting as a country of transit, has found it possible to implement this provision on its own responsibility by preventing the transshipment through its territory of strategic goods enroute from non-cooperating third countries to the Soviet Bloc unless it can be proven that the exportation was authorized for shipment to the Soviet Bloc by the third country, or by the country of which the exporter is a resident.

The United States accomplishes this by implementation of the following regulations:

Except for a limited number of commodities which may be exported from the United States under general license to Poland and the European Soviet Bloc, any transshipment through the United States of commodities destined for the Soviet Bloc which originate in any country other than Canada requires a United States validated export license. Intransit shipments of goods of Canadian origin must be accompanied by documentary proof that their exportation has been approved by the Canadian Government.

Applications for United States validated export licenses for commodities moving in transit through the United States to the Soviet Bloc must be accompanied by "any evidence available showing the approval or acquiescence of the exporting country (or the country of which the exporter is a resident), with respect to the proposed ultimate destination of the shipment. Such evidence may be submitted in the form of a Transit Authorization Certificate or other document." However, since the United States maintains a higher level of controls than other PC's, it may be that the United States would not issue a validated export license in certain cases of this nature.

This regulation cannot be enforced in the case of direct transshipments which are not unloaded from the incoming carrier, unless the goods were manifested to the United States and/or the destination on the incoming bill of lading was changed within the United States.

The basic justification for this requirement is that the United States does not permit its residents to participate in, or permit its facilities to be used for illegitimate trade transactions. This regulation precludes the possibility of utilizing non-cooperating third countries for the illegal diversion of strategic goods originating in a PC and subsequently transiting the United States enroute to the Soviet Bloc.

2. The principles of transactions controls whereby it should be made impossible for residents of member countries to effect transactions in strategic goods which Soviet Bloc countries are implemented by the United States by prohibiting United States residents from engaging in transactions (as principals, agents, brokers, insurers, or otherwise) involving the shipment of strategic commodities from third countries to the Soviet Bloc unless such transactions are specifically authorized by the United States Treasury Department.

The United States controls are consistent with the COCOM understanding relating to transactions controls. In line with the principles expounded by the Netherlands Delegation in COCOM Document 814, the United States controls are applicable to United States residents regardless of the manner in which the transactions are effected and regardless of where or how the transactions are financed.

3. It is implicit in the provisions of paragraph 5 of the TAC scheme (quoted in item 1 above) that a PC will issue a TA Certificate when it approves a transaction of a resident acting as a principal in a shipment of strategic goods from a non-cooperating third country to the Soviet Bloc.

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The United States has issued TA Certificates to accompany shipments from third countries to the Soviet Bloc which were licensed under United States Transaction Control Regulations and has thereby indicated to transshipping countries that the United States had accepted responsibility for the transactions of the United States principal involved and had approved the Soviet Bloc as the final destination.

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